

2-9-1990

## State Administered Auto Insurance. Auto Claims Court. Initiative Constitutional Amendment And Statute.

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Office of the Secretary of State  
March Fong Eu

1230 J Street  
Sacramento, California 95814

#511  
ELECTIONS DIVISION  
(916) 445-0820  
For Hearing and Speech Impaired  
Only:  
(800) 833-8683

July 27, 1990

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND  
PROPOSERS (90157)

FROM: Caren Daniels-Meade  
CAREN DANIELS-MEADE  
CHIEF, ELECTIONS DIVISION

Pursuant to Elections Code section 3520(b) you are hereby notified that the total number of signatures to the hereinafter named proposed INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has failed.

TITLE: STATE ADMINISTERED AUTO INSURANCE.  
AUTO CLAIMS COURT.  
INITIATIVE CONSTITUTIONAL AMENDMENT  
AND STATUTE.

SUMMARY DATE: February 9, 1990

PROPOSERS: Carmen Gonzalez  
Angelo Paparella  
Harvey Rosenfield  
Bill Zimmerman  
Rob Lavis

CDM/bl/cb





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#511

February 9, 1990

**TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS(90031)**

Pursuant to Section 3513 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**STATE ADMINISTERED AUTO INSURANCE.  
AUTO CLAIMS COURT.  
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.**

**Circulating and Filing Schedule**

1. Minimum number of signatures required.....595,485  
Cal. Const., Art. II, Sec. 8(b).
2. Official Summary Date.....Friday, 02/09/90  
Elec. C., Sec. 3513.
3. Petition Sections:
  - a. First day Proponent can circulate Sections for  
signatures .....Friday, 02/09/90  
Elec. C., Sec. 3513.
  - b. Last day Proponent can circulate and file with  
the county. All sections are to be filed at  
the same time within each  
county.....Monday, 07/09/90+  
Elec. C., Secs. 3513, 3520(a)
  - c. Last day for county to determine total number of  
signatures affixed to petition and to transmit total  
to the Secretary of State  
.....Monday, 07/16/90

(If the Proponents file the petition with the county on a date prior to 7/09/90, the county has five working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 3520(b).

- + NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 6, 1990 GENERAL ELECTION: The law allows approximately 107 days for county election officials to check and report petition signatures and transmit results. The law also requires that this process be completed 131 days before the election in which the people will vote on the initiative. It is possible that the county may not need precisely 107 days. However, if you want to be sure that this initiative qualifies for the November 6, 1990 General Election, you should file this petition with the county before March 23, 1990.



STATE ADMINISTERED AUTO INSURANCE.  
AUTO CLAIMS COURT.  
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.  
February 9, 1990  
Page 2

- d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties  
.....Wednesday, 07/25/90\*\*
- e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State  
.....Wednesday, 08/15/90
- (If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 7/16/90, the last day is no later than the fifteenth day after the county's receipt of notification.)  
Elec. C., Sec. 3520(d), (e).
- f. If the signature count is more than 655,033 or less than 565,711, then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 565,711 and 655,033 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures  
.....Saturday, 08/25/90\*\*
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State  
.....Wednesday, 10/10/90
- (If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 8/15/90, the last day is no later than the thirtieth working day after county's receipt of notification.)  
Elec. C., Sec. 3521(b), (c).
- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient  
.....Sunday, 10/14/90

\*\*Date varies based on receipt of county certification.

STATE ADMINISTERED AUTO INSURANCE.  
AUTO CLAIMS COURT.  
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.  
February 9, 1990  
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4. The Proponents of the above-named measure are:

Carmen Gonzalez  
Angelo Paparella  
Harvey Rosenfield  
Bill Zimmerman  
Voter Revolt  
3325 Wilshire Boulevard, Suite 550  
Los Angeles, California 90010  
213/383-9618

Rob Lavis  
1942 Bonita Avenue  
Berkeley, California 94704

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code section 29770; Bilofsky v. Deukmejian (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen. 37 (1980).
- (b) Please refer to Elections Code sections 44, 3501, 3507, 3508, 3517, and 3519 for appropriate format and type consideration in printing, typing, and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

Sincerely,



CAREN DANIELS-MEADE  
Chief, Elections Division

Attachment: POLITICAL REFORM ACT OF 1974 REQUIREMENTS

JOHN K. VAN DE KAMP  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. BOX 944255  
SACRAMENTO 94244-2550  
(916) 445-9555

February 9, 1990

(916) 324-5508

Honorable March Fong Eu  
Secretary of State  
1230 J Street  
Sacramento, CA 95814

**FILED**  
In the office of the Secretary of State  
of the State of California

FEB 9 1990

MARCH FONG EU, Secretary of State

By *[Signature]*  
Deputy

Dear Mrs. Eu:

Initiative Title and Summary

Subject: STATE ADMINISTERED AUTO INSURANCE. AUTO CLAIMS COURT.  
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

Our File No. SA 89 RF 0048

Pursuant to the provisions of sections 3503 and 3513 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and addresses of the proponents are as stated on the declaration of mailing.

Very truly yours,

JOHN K. VAN DE KAMP  
Attorney General

*[Signature]* ASST A-G.  
For MARY WHITCOMB  
Initiative Coordinator

MW:ckm

Enclosures

Date: February 9, 1990  
File No.: SA 89 RF 0048

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

STATE ADMINISTERED AUTO INSURANCE. AUTO CLAIMS COURT.  
INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE. Replaces private auto insurance system with state administered program of required, basic auto insurance if Insurance Commissioner determines that average private premiums exceed Proposition 103's rollback level or that average percentage of vehicles without required insurance exceeds 15 percent. Specifies operation of program. Regulates attorney fees in vehicle accident cases. Creates "auto claims court" to resolve claims up to \$15,000 under state issued insurance. Requires informal proceedings without attorneys or jury. Establishes consumer board. Provides penalties for violations. Permits statutory amendments by 2/3 vote of Legislature. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: If California Non-profit Insurance Fund is established, would incur one-time multimillion dollar General Fund loan (repayable within three years) to finance start-up costs, possible one-time multimillion dollar state administrative costs to change DMV registration cycles to coincide with insurance renewal dates, and ongoing multimillion dollar annual state costs for Auto Claims Court, offset by unknown savings in state and local court costs. Would cause ongoing multimillion dollar annual state and local government enforcement costs, possible increased state insurance tax revenues, and possible loss in motor vehicle license and registration fee revenues.

SA89RF0048



RECEIVED  
DEC 19 1989

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

December 19, 1989

Attorney General John Van de Kamp  
Department of Justice  
1515 K Street, #511  
Sacramento, CA 95814

Dear Mr. Van de Kamp:

Enclosed is a proposed initiative constitutional amendment for the California ballot. We are the Executive Committee of Voter Revolt, a California consumer organization. If it is possible to officially list Voter Revolt as the proponent of the initiative, that is our preference. If not, you may list each of us collectively as the proponent.

Pursuant to Sections 3502 and 3503 of the Elections Code, we request that you prepare a title and summary for the initiative, and we have enclosed with this letter a check for \$200.00 to cover the filing fee. The counties in which we are registered to vote appear below our names.

Thank you for your attention.

Carmen Gonzalez  
Carmen Gonzalez  
3325 Wilshire Blvd., Suite 550  
Los Angeles, CA. 90010  
Los Angeles County

Robert C. Lavis  
Rob Lavis  
1942 Bonita Avenue  
Berkeley, CA. 94704  
Alameda County

Angelo Paparella  
Angelo Paparella  
3325 Wilshire Blvd., Suite 550  
Los Angeles, CA. 90010  
Los Angeles County

Harvey Rosenfield  
Harvey Rosenfield  
3325 Wilshire Blvd., Suite 550  
Los Angeles, CA. 90010  
Los Angeles County

Bill Zimmerman  
Bill Zimmerman  
3325 Wilshire Blvd., Suite 550  
Los Angeles, CA. 90010  
Los Angeles County



INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

(Here set forth the title and summary prepared by the Attorney General. This title and summary must also be printed across the top of each page of the petition whereon signatures are to appear.)

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of \_\_\_\_\_ county (or City and County), hereby propose amendments to the Constitution of California and the Insurance Code, relating to reform of the insurance industry, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed constitutional and statutory amendments (full title and text of the measure) read as follows:

# **The Proposition 103 Enforcement Act**

## **Section 1. Findings and Purpose**

The People of the State of California find and declare:

(a) Insurance companies doing business in California have not reduced their rates to the levels specified by Proposition 103, an initiative measure enacted by the people of California on November 8, 1988 to cut rates, regulate insurers and prohibit arbitrary and unfair insurance practices. Indeed, most insurance companies have increased auto insurance rates since passage of Proposition 103, and have made auto insurance less available.

(b) As a consequence, many motorists are unable to afford or obtain basic auto insurance required by law. These uninsured motorists pose an enormous safety and financial threat to themselves and to others. This situation now constitutes an acute crisis that threatens the health, safety and welfare of the citizens of California, and the economic well-being of the state.

(c) This emergency has been caused primarily by the failure of the insurance companies to moderate their profits, reduce wasteful and bloated overhead expenses, control auto repair, health care and legal defense costs, and crack down on fraud.

(d) Most insurance companies insist that it is beyond their capability to lower insurance rates and have threatened to leave the state if forced to do so. Consequently, California motorists can no longer depend on the current automobile insurance system to meet their needs.

(e) In addition, the lack of effective penalties against insurers for failing to settle claims in good faith and the absence of an informal and inexpensive means of adjudicating automobile insurance claims forces many claimants to accept inadequate and unfair settlements, or spend large amounts of money and time seeking compensation through the crowded courts.

(f) It is therefore necessary to provide for an alternative insurance system to replace the current one in the event that the present crisis is not permanently alleviated. If by September 1, 1991, private insurers have proven themselves unable or unwilling to undertake the reforms necessary for them to substantially reduce premiums while simultaneously earning a fair profit, a publicly-controlled, non-profit automobile insurance company must be established to serve the needs of California motorists.

(g) The California Non-Profit Insurance Fund must be publicly-controlled, non-profit and the sole provider of insurance policies to the people of California in order for it to:

- Offer insurance at the lowest possible price;
- Establish a stable, uniform insurance system;
- Guarantee that all drivers are insured;
- Use its resources for the benefit of policyholders;
- Operate with strictly limited overhead and other administrative expenses;
- More effectively control health care, auto repair and legal defense costs;
- Reduce fraud;
- Invest in safety efforts to prevent car accidents and theft;

- Facilitate the informal resolution of claims, which will unclog the court system and discourage unnecessary litigation;
- Invest funds for the benefit of its policyholders and California's economy; and,
- Be accountable to California citizens.

(h) In order to promote honest and fair dealing by all insurance companies, doctors, lawyers, claimants and others, new consumer protections, better consumer representation and severe penalties for fraudulent or inflated claims are necessary.

(i) In order to assure a smooth transition period in the event it is necessary to establish the comprehensive automobile insurance system set forth in this initiative, and to prevent insurers from defying or violating the reforms of Proposition 103 during this period, it is necessary to establish severe criminal and civil penalties for such violations and give the Insurance Commissioner and the California Non-Profit Insurance Fund broad powers, including the authority to exercise powers of eminent domain and receivership.

## **Section 2. The California Non-Profit Insurance Fund**

Article XXXV is added to the California Constitution, to read:

### **Determination of Need for the California Auto Plan**

SEC. 1. (a) On September 1, 1991, and on each September 1 thereafter, unless the California Non-Profit Insurance Fund is established earlier pursuant to Section 10, the Insurance Commissioner of California shall determine whether:

(1) The average premium written during the first six months of that year for private passenger vehicle insurance sold in California is less than the rollback level specified by Proposition 103, as adjusted for inflation and changes in coverages; and

(2) The average percentage of private passenger vehicles registered in California that operated during the first six months of that year in violation of the California financial responsibility laws is less than fifteen percent of the total number of such vehicles.

(b) The commissioner shall issue such findings in writing. The California Supreme Court shall have original and exclusive jurisdiction over any challenge to the commissioner's findings. The commissioner's findings shall be conclusive unless they are clearly erroneous. The Court's decision shall be rendered within 120 days of commencement of the action. Review shall not stay the establishment of the California Non-Profit Insurance Fund pursuant to Section 2.

### **Establishment of the California Non-Profit Insurance Fund**

SEC. 2. (a) On the thirtieth day following the date on which the determinations specified in Section 1 are required by law to be made, there shall be established a public corporation to be known as the California Non-Profit Insurance Fund, unless the commissioner determines that the conditions set forth in paragraphs (1) and (2) of subdivision (a) of Section 1 have both been met.

(b) The first policy of vehicle insurance that the Fund offers for sale to each motorist shall become effective one year after the Fund is established, or on such later date as the motorist's then existing policy expires. Notwithstanding this subdivision, if the

commissioner finds that an availability crisis exists, pursuant to Section 10, the Fund may sell policies that become effective as soon as is practicable.

### **Exclusive Insurance Sales and Elimination of Uninsured Motorists**

#### **SEC. 3. (a) Sale of Basic and Additional Insurance.**

(1) No private passenger vehicle registered in the state shall be operated on the public and private roads of the State unless covered by a policy of insurance issued by the Fund that meets either the requirements of the financial responsibility laws or such other insurance requirements as may be set forth by law.

(2) The Fund shall offer to sell to any licensed driver resident in the State insurance coverage that the Fund offers for sale to others.

(3) The Fund shall offer insurance coverage for both private passenger and non-private passenger vehicles, in such amounts and under such terms as the Fund finds best serve the people of California. The Fund shall not sell insurance other than for excess liability, property damage, medical payments, comprehensive, collision, and other loss relating to passenger vehicles, unless authorized by the Legislature pursuant to Section 10.

#### **(b) Restriction on the Sale of Insurance by Private Insurers**

(1) No person or insurer shall sell passenger vehicle insurance for any form of coverage within the limits offered by the Fund.

(2) The People of California declare that it is necessary to displace private insurance companies in the sale of passenger vehicle insurance in order to fully accomplish the objectives of this Initiative Measure and the compelling public interest they serve.

### **Section 3. Rates & Accountability**

Division 3.5 of the Insurance Code is added to read:

13800. This division applies to the California Non-Profit Insurance Fund, established by Article 35 of the California Constitution.

#### **Reduction of Rates, Cost Containment and Prevention of Losses**

13801. The Fund shall do all of the following:

(a) Offer insurance at the lowest price consistent with operation on a sound fiscal basis.

(b) Rebate or credit to policyholders net income earned by the Fund beyond that necessary to establish and maintain an emergency reserve fund adequate to ensure the Fund's fiscal well being.

(c) Offer motorists the option of purchasing or renewing passenger vehicle insurance through licensed agents and brokers and through any other means that the Fund finds convenient for consumers, such as the Department of Motor Vehicles, the mail and financial institutions, as provided by law. Different premiums may be charged according to the method of sale. The Fund shall permit policyholders to purchase policies on an installment basis.

(d) Enable consumers to renew their passenger vehicle registrations when they purchase or renew their insurance policies.

(e) Limit its annual administrative expenses, after the third year of operation, to not more than 20% of annual premiums written. The commissioner may waive this limit in the event of an emergency.

(f) Pay no employee of the Fund, including senior executives, an annual salary in excess of that received by the president of the State Compensation Fund.

(g) Invest all funds not required for immediate use in a prudent manner and for the benefit of policyholders. All such funds shall be invested within California, insofar as is possible without adversely affecting the rate of return on such investments and as permitted by law.

(h) Reduce the costs of health care and auto repair services in California, and pass these savings on to policyholders.

(i) Reduce the frequency and severity of vehicle accidents and other insured losses by encouraging safer driving habits; analyzing loss data to determine the relative safety of vehicles by make and model and periodically publishing such information; promoting safer roadway design, construction and maintenance; promoting safer vehicle design and safety equipment such as airbags and child safety seats. The Fund shall provide for premium discounts and surcharges and engage in public education and advocacy activities in furtherance of these goals.

### **Regulation of Rates and Compliance with Proposition 103**

13802. The Fund shall do all of the following:

(a) Establish rates, rating manuals, underwriting guides, classifications, policies, and charges, and obtain approval for them, in compliance with the regulatory, accountability, consumer protection, civil rights and other laws as set forth by Proposition 103, including, but not limited to, the provisions of subdivision (a) of Section 1861.03, and be subject to other laws pertaining to the business of insurance, except where inconsistent with Article 35 of the California Constitution, this division, or laws specifically relating to the Fund.

(b) Provide to each policyholder upon issuance and renewal of a policy an explanation of the Fund's current rates and classifications and how the policyholder's premium was determined.

(c) Review and resolve policyholder complaints promptly. The Fund shall establish a panel to review, at the request of a policyholder, grievances against the Fund, including, but not limited to, complaints regarding rating, billing and claims practices.

(d) Provide to the commissioner, the Legislature, and make available to the public (1) an annual independent audit of its accounts, (2) an annual review of its records prepared by an independent actuary, and, (3) quarterly financial statements that show the Fund's assets and liabilities. In addition to the foregoing, the commissioner shall have the authority to review the records and operations of the Fund at any time.

(e) Make available to qualifying low income motorists a low-cost insurance policy approved by the commissioner. The policy shall include, at a minimum, the coverage

required by law. In order to make the policy affordable to low-income drivers, the commissioner may establish rates for the policy that utilize a portion of the savings in uninsured motorist losses realized as a result of the addition of Article 35 of the California Constitution and Division 3.5 of the Insurance Code. The commissioner shall specify eligibility requirements by regulation.

#### **Governance of the Fund**

13803. (a) The Fund shall be governed by a board of nine directors, representing the full spectrum and diversity of California policyholders. The board shall be appointed by the commissioner as follows:

(1) Upon establishment of the Fund, three persons shall be appointed to six-year terms; three shall be appointed to four year terms; three shall be appointed to two-year terms. Thereafter, the commissioner shall appoint directors to full six-year terms.

(2) In the event of incapacity or vacancy, the commissioner shall make a new appointment to fill the unexpired portion of a director's term. Directors may be removed by the commissioner only for good cause.

(b) Five directors shall constitute a quorum of the board for the transaction of business. All acts of the board shall be by majority vote of those present.

(c) The board shall hold not less than three public meetings each year.

(d) Subject to the laws of this state, the board may formulate and declare additional rules and procedures necessary or expedient for the carrying out of its responsibilities, and for recall of directors by the policyholders.

#### **Coordination with Department of Motor Vehicles**

13804. (a) In order that motorists may be able to renew both their private passenger vehicle registrations and insurance policies simultaneously, the Department of Motor Vehicles shall, at the request of the commissioner, alter the term of such registrations as necessary, so that each motorist's registration renewal date falls on the same date as does the policy renewal.

(b) The Fund shall be authorized on behalf of the Department of Motor Vehicles to collect fees and accept applications for private passenger vehicle registrations and registration renewals. The Fund shall be entitled to reimbursement from the Department of Motor Vehicles for reasonable expenses incurred in performing these services.

(c) At the request of the Fund, the Department of Motor Vehicles shall collect premiums and accept applications for insurance policies issued by the Fund. The Fund shall reimburse the Department of Motor Vehicles for reasonable expenses incurred by it in performing these services.

(d) No application for private passenger vehicle registration or registration renewal shall be approved absent proof that the owner is in compliance with subdivision (a) of Section 3 of Article 35 of the California Constitution.

(e) The Department of Motor Vehicles shall cooperate in all respects with the Fund and Commissioner in order that the provisions of this section may be effectively and

efficiently implemented. Such cooperation shall include, but not be limited to, establishing a computerized policyholder data management system.

### **Right to Confidentiality**

13805. Information identifying individual policyholders communicated to or held by the Fund shall be confidential pursuant to Article 6.6 (commencing with Section 791) of Chapter 1, Part 2, Division 1. The Information Practices Act of 1977 shall apply to the Fund only with respect to records containing personal information about employees of the Fund. Nothing in this section shall be construed to hinder the investigation or prosecution of fraud pursuant to law.

### **Commissioner's Responsibilities**

13806. (a) The Commissioner shall develop a plan for the implementation of the Fund as described in this division and Article 35 of the California Constitution and shall publish the plan not later than July, 1 1991. The plan shall include a study of the economic benefit to the state of California of this Initiative Measure, including the impact of the increased investment of premiums within the state of California.

(b) Two years after the establishment of the Fund, the commissioner shall appoint a commission to study whether any changes should be made in the amount or form of vehicle insurance coverage motorists are required to purchase by law, and the estimated impact of such changes upon insurance premiums, if any. The commissioner shall report the findings of the commission to the Legislature within one year.

(c) Actions of the commissioner pursuant to this division and Article 35 of the California Constitution, other than the commissioner's determination pursuant to Section 1 of Article 35 of the California Constitution and development of the implementation plan pursuant to subdivision (a), shall be subject to the Administrative Procedures Act; provided that no such action shall be subject to review or approval by the Office of Administrative Law.

### **Start-up Loan**

13807. (a) Upon establishment of the Fund, there is appropriated from the General Fund a loan to the Fund, in such amount as the commissioner determines is necessary to cover the administrative costs of commencing operation of the Fund. At the request of the commissioner, the State Controller shall make such funds available to the Fund. The loan shall be repaid by the Fund with interest to the State Treasury at the rate earned by the California Pooled Money Investment Fund within three years.

### **Section 4. Powers of the California Non-Profit Insurance Fund**

Section 4 is added to Article XXXV of the California Constitution, to read:

SEC. 4 (a) The Fund shall be a public corporation. It has perpetual succession and a seal and it may sue and be sued. It may, for the purposes of carrying into effect and promoting its objectives:

(1) Make contracts with public or private entities for the performance of any of its functions, including, but not limited to, marketing policies, adjusting and defending claims, reinsuring risks, and investing funds, to ensure economical and efficient delivery of insurance services to the public.

- (2) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations. However, the Fund shall be financially self-sustaining. No obligations of the Fund shall be or become a lien, charge, or liability against the State of California.
- (3) Own, hold, use, manage and deal, in and with real and personal property.
- (4) Construct, alter, maintain and repair buildings and other improvements to real property.
- (5) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.
- (6) Sell, lease, exchange, convey, transfer, assign, encumber, dispose of any of its real or personal property or any interest therein, including without limitation, all or any portion of its income or revenues.
- (7) Exercise the power of eminent domain to acquire real, personal, intangible, or any other property whatsoever, or any interest therein. The power of eminent domain may be exercised for the uses, purposes, objects and functions of the Fund, which are deemed and declared to be public uses for which the power of eminent domain may be exercised by the Fund. This power shall be exercised by the Fund in accordance with Section 19 of Article 1 of this Constitution, and statutes enacted pursuant thereto, except that all of the following shall apply:
- (A) The Fund may obtain possession of the property being condemned following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the Fund to be the probable amount of just compensation;
- (B) The order of pre-judgment possession shall not be subject to objection, relief, stay, or vacation; and,
- (C) The order for pre-judgment possession shall become effective 30 days after service upon the defendant(s) in the eminent domain action and the person or entity in possession of the property being condemned. Nothing in this Article shall be deemed or construed to require that the Fund acquire any property by eminent domain or otherwise.
- (8) Advocate the interests of its policyholders in any forum; provided that the Fund shall not sponsor, endorse, or otherwise support or oppose any political party or the candidacy of any person for elective office.
- (9) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

## **Section 5.**

### **Reasonable Limits on Legal Fees**

Section 13808 is added to the Insurance Code, to read:

13808. (a) The Fund shall pay no lawyer employed or retained by the Fund, for defense of insurance claims, in excess of the hourly rate fixed and determined by the Attorney



General under subdivision (a) of Section 11044 of the Government Code, and which is published in the General Services Price Book and Directory of Services for legal services charged by the Attorney General to other state agencies.

(b) In motor vehicle accident cases where the defendant is insured for liability by the Fund, and in other claims for recovery pursuant to an insurance policy issued by the Fund, fees charged by, or paid to, the plaintiffs or claimant's lawyer shall be net of costs, and shall not exceed:

(1) For any amount of recovery that is within the jurisdictional limit of the Auto Claims Court, 25% of the amount obtained by the plaintiff, not to exceed \$1,000 if settlement is reached within 20 days of the first demand for payment; plus

(2) For any amount of recovery that is in excess of the jurisdictional limit of the Auto Claims Court and not greater than the policy limit, one-third of the amount of such recovery.

(c) A court may set a higher or lower fee if it determines that the fees specified in subdivisions (a) and (b) are manifestly unjust in light of the work performed, or if the fee limit would prevent adequate representation. In making this determination, the court shall consider whether a plaintiff's recovery was less than the amount of a settlement offer, if any.

(d) Settlement offers made under this Section must be in writing, and must be communicated by a lawyer to his or her client within two working days.

## **Section 6.                      Auto Claims Court**

Section 5 is added to Article XXXV of the California Constitution, to read:

SEC. 5. (a) There shall be established an Auto Claims Court with power to resolve claims brought by any person seeking recovery pursuant to and within the limits of an insurance policy issued by the Fund, as specified in this section.

(b) Any person who suffers personal injury or property loss arising from the operation or ownership of a vehicle insured by the Fund may sue in Auto Claims Court for recovery under the terms of the insurance policy. The Fund shall pay compensation and provide other relief as ordered by the court, but the court shall not have jurisdiction to order any other party to pay compensation. Claims and parties may be joined. The maximum amount of a claim that can be filed in Auto Claims Court by any one party, whether a plaintiff, co-plaintiff, or cross-complaining defendant, is fifteen thousand dollars (\$15,000), to be adjusted by the Legislature every five years for inflation.

(c) The Auto Claims Court shall operate without a jury and with such limited rules of discovery and evidence as are appropriate for the prompt and fair resolution of disputes. Procedures shall be informal, permitting the judge to discover the facts quickly, easily and accurately. The parties shall have the right to offer evidence and the testimony of witnesses either at the hearing, or by mail, telephone, or such other means as the judge allows.

(d) Every insurance policy issued or renewed by the Fund shall inform the policyholder of his or her right to file a claim in Auto Claims Court in the event of loss, and shall provide an explanation of the procedures for filing such claims.

(e) There shall be established a Consumer Assistance Office under the supervision of the Auto Claims Court which shall provide, through toll free telephone access and other means, information and general guidance, at no charge, to individuals involved in claims before the court.

(f) No lawyer may represent another person or the Fund in Auto Claims Court. This does not preclude a lawyer appearing to prosecute or defend an action against him or herself, or testifying about facts of which he or she has personal knowledge and about which he or she is competent to testify. If a claimant does not speak or understand the English language sufficiently to comprehend the proceeding or give testimony; or, for some other reason, cannot effectively prepare or present his or her own case, the court may permit an employee of the Consumer Assistance Office, or some other person who is not a lawyer, to assume primary responsibility for the case and appear at the hearing at the claimant's consent.

(g) The judge shall record his or her decision in an order that includes findings sufficient to make the basis for the decision clear. Orders of the court are res judicata unless appealed, in which case they will be given the same effect after appeal as judgments. The order shall not be overturned unless capricious, arbitrary or an abuse of the judge's discretion. Except as provided in this section, decisions and orders of the court shall have no other collateral effect; however, the Fund may refer to such decisions in adjusting individual premiums.

(h) A claim or cross-claim may be dismissed without prejudice at any time before trial. Thereafter, or when requested by the defending party or the Fund, dismissal may be had, and under such terms, as allowed by the judge. Except as provided herein, nothing in this section shall preclude an injured party from bringing his or her claim in any other court of competent jurisdiction.

(j) Subject to the requirements of this section, and consistent with its purposes, the Legislature is vested with plenary powers to provide for the establishment of the Auto Claims Court in the courts of law, in the Department of Insurance, or other agency; may fix and control the method and manner of trial of claims within the court's jurisdiction, the manner of review of decisions and orders rendered by the court, procedures, rules and requirements regarding the commencement of Auto Claims Court actions, venue, pleadings, forms, appearances and service of process. However, if no enactment is made pursuant to this section within two years of the establishment of the Fund, the Auto Claims Court shall be established by the commissioner, who shall be vested with the responsibilities of this section.

## **Section 7. Requirement that All Insurers Settle Cases in Good Faith**

Section 790.11 is added to the Insurance Code, to read:

(a) Every person engaged in the business of insurance in the state of California is required to act in good faith toward, and to deal fairly with, current and prospective policyholders and other persons intended to be protected by any policy of insurance. A policyholder, including the beneficiary or a subscriber of a group policy for any form of insurance purchased in this state, or a third party may bring an action against an insurer or licensee to recover damages for violation of the provisions of Section 790.03, and damages may be recovered for any violation that injures or damages that policyholder or third party without proof of any violations affecting others. No third party may bring an action until liability in the underlying case has been determined by a trial court judgment, or by settlement, provided that where the trial court makes a finding that a

settlement was accomplished timely and in good faith, an action by a third party shall be precluded.

The purpose of this section is to regulate unfair insurance practices, including unfair claims practices, by providing state court remedies to California citizens, including compensatory and exemplary damages to policyholders who are victims of unfair insurance practices. No award of exemplary damages under this subdivision may be passed on to policyholders directly or indirectly, but no award shall exceed 10% of an insurer's surplus.

(b) No action may be maintained against the Fund for violation of subdivision (c) of Section 790.03 arising from its obligation to provide insurance to all California motorists. In any other action against the Fund for violation of Section 790.03, the prevailing claimant shall be entitled to compensatory damages and reasonable costs and attorneys fees.

(c) Any insurer sued under paragraph (a) or (b) shall report the suit to the commissioner, who shall make such report public.

#### **Section 8.                      The Fund's Tax Responsibilities**

Section 6 of Article XXXV of the California Constitution is added, to read:

SEC. 6. The Fund shall be subject to the gross premiums tax pursuant to Section 28 of Article 13 of this Constitution.

#### **Section 9.                      Prohibition on Fraudulent or Inflated Claims**

Section 1871.3 is added to the Insurance Code, to read:

(a) It is unlawful:

(1) To knowingly present or cause to be presented in support of a claim a bill for medical or other treatment of a physical injury if the treatment was not given or was obtained with the knowledge that it was unnecessary.

(2) To knowingly encourage a claimant to obtain medical or other treatment, or to obtain bills for that treatment, where the treatment was reasonably known to be not necessary or not performed, with the intent that a claim would be made for the cost of the treatment.

(3) To knowingly give perjured testimony or make false affidavits in support of a false or fraudulent claim.

(4) For an attorney to require a person to patronize a particular health care provider as a condition of accepting that person as a client or agreeing to prosecute a case.

(5) To knowingly pay a false or fraudulent claim.

(6) To knowingly assist, abet, solicit or conspire with any person who violates any of the above prohibitions.

(b) Every person who violates any provision of this section is punishable under the terms set forth in Section 1871.1. In addition to such penalties, any person licensed under the

Business and Professions Code who is convicted of violating this section must show cause why the license should not be revoked, at a hearing to be held within ninety days of the conviction. The license shall be immediately suspended pending the hearing. Final resolution of the matter shall be completed within 180 days after the hearing.

#### **Section 10. Plain Language Requirement**

Section 13809 of the Insurance Code is added, to read:

13809. All notices, policies or other materials required by Article 35 of the California Constitution or this division to be distributed by the Fund or any government agency in connection with the functions of the Fund or Auto Claims Court, shall be written in plain, simple language.

#### **Section 11. Consumer Representation**

Sections 7 and 8 of Article XXXV of the California Constitution are added, to read:

SEC. 7. (a) The People of California find that the education and active participation and representation of citizens in insurance matters is necessary to ensure an effective and accountable system of insurance, including compliance by the California Non-Profit Insurance Fund and other insurers with this Article and other provisions of the insurance laws. Such education and participation can best be accomplished by disseminating information to policyholders directly through mailings by the Fund and by any agency of government on its behalf, and by providing policyholders with the opportunity to associate with other policyholders in monitoring the implementation and enforcement of the insurance laws.

(b) The Fund, and any other agency of government acting on its behalf, shall distribute through its mailings to policyholders such notices, informational materials and other materials as are deemed necessary by the commissioner or required pursuant to this section.

SEC. 8. (a) There is established a Board of Consumer Representation ("BCR") as an agency to:

- (1) Advise the commissioner and the Fund on behalf of its members regarding rates, policies and practices;
  - (2) Educate and assist members in preparation and submission of claims or disputes to the commissioner, Fund, Auto Claims Court or other entity.
  - (3) Represent and promote the interests of members before the commissioner, the Fund, or any other public body, and initiate, maintain, intervene, support or oppose or participate in any proposal or proceeding related to insurance which affects the interests of its members.
  - (4) Conduct and support research, surveys, conferences and public information activities concerning insurance matters.
- (b) The commissioner shall appoint an interim Board of Governors which shall immediately organize the BCR, inform policyholders of and solicit their membership in the BCR, employ such staff as are necessary, solicit funds, and establish procedures for democratic election of eight members of the Board of Governors on staggered terms.

(c) The Board of Governors shall consist of twelve members, four of which shall be appointed by the commissioner. No present employee, director, consultant, attorney, accountant of any private insurer, the Fund or the commissioner, or spouse of any such person, shall be eligible to be a member of the Board of Governors. No Board of Governors member or candidate may hold an elective public office or be a candidate for elective public office or be appointed to hold state or local office. The Board shall carry out all duties and exercise all powers necessary to accomplish the purposes of this section.

(d) The BCR shall be funded by voluntary donations from its members and through other grants or donations, except that no gift, loan or other aid shall be accepted from any insurance company, director, employee or agent thereof. The Board of Governors shall establish an annual membership fee of not more than \$10.00, to be adjusted every five years for inflation. Membership fees shall be deposited in the "Consumer Representation Fund," which shall be maintained as a trust fund by the State Treasurer. Monies in the Consumer Representation Fund shall be continuously appropriated for expenditure by the Board of Governors to cover all actual and necessary expenses incurred in carrying out the provisions of this section. The Legislature shall have no right of appropriation of monies in the Consumer Representation Fund.

(e) The BCR shall prepare and furnish to the Fund and any state agency acting on its behalf an enclosure which shall be included in any mailing to policyholders of the Fund designated by the BCR.

(f) Upon furnishing any enclosure permitted by this section, the BCR shall:

(1) Certify that the enclosure is neither false nor misleading. Upon request by the Fund or agency, the commissioner shall review the enclosure, and may disapprove the enclosure if it is false or misleading.

(2) Reimburse the Fund or agency for all reasonable incremental costs incurred as a result of compliance with this section above normal mailing and handling costs, provided that an itemized accounting of such additional costs shall be first provided.

(g) The BCR shall not sponsor, endorse, or otherwise support or oppose any political party or the candidacy of any person for elective office.

(h) The Legislature shall make no appropriation for this section.

## **Section 12.                      Transfer of Policyholder Data**

Section 1064.20 is added to the California Insurance Code, to read:

1064.20 (a) No application for authority to withdraw, pursuant to Article 15 (commencing with Section 1070), filed by any insurer, shall be deemed complete unless accompanied by a tender of such information as the commissioner or the California Non-Profit Insurance Fund may require to carry out the provisions of law applicable to the California Non-Profit Insurance Fund, including, but not limited to, all loss data and all individual policyholder records in a format specified by the commissioner.

(b) No insurer shall move, transfer, alter, destroy or take any action with respect to the data required by subdivision (a) with the purpose or effect of violating subdivision (a).

### **Section 13.**

### **Unlawful Withdrawal by Insurance Companies**

Section 1064.21 of the California Insurance Code is added, to read:

(a) If the commissioner determines that an insurer is substantially in violation of subdivision (b) of Section 1861.02, subdivision (c) of Section 1861.03, or Section 1064.20, it shall be deemed a delinquent insurer for purposes of this Chapter. In the event of such a delinquency:

(1) The superior court of the county in which is located the principal office of any person purporting to do insurance business in this State, or whose certificate of authority is revoked or suspended shall, upon the filing by the commissioner of a verified application showing that such person is a delinquent insurer in violation of subdivision (b) of Section 1861.02, subdivision (c) of Section 1861.03, or Section 1064.20, issue its order vesting title to all of the assets of such person, wheresoever situated, in the commissioner or his successor in office, in his official capacity as such, and direct the commissioner forthwith to take possession of all its books, records, property, real and personal, and assets, and to conduct, as receiver, the business of said person, or so much thereof as to the commissioner may seem appropriate, and enjoining said person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of said court.

(2) Said order shall continue in force and effect until, on the application of such person, it shall, after a full hearing, appear to the commissioner that the ground for said order does not exist or has been removed and that said person can properly resume title and possession of its property and the conduct of its business.

(3) Whenever the commissioner makes any seizure as provided in paragraph (1), it shall, on the demand of the commissioner, be the duty of the sheriff of any county of this State, and of the police department of any municipal corporation therein, to furnish him with such deputies, patrolmen or officers as may be necessary to assist the commissioner in making and enforcing any such seizure.

(4) The recording in the office of a county recorder of any county in the State of an order entered pursuant to paragraph (1) shall impart the same notice that would be imparted by the recordation of a deed, bill of sale or other evidence of title duly executed by such person.

(5) Upon the issuance of an order either under paragraph (1) or at any time thereafter, the court shall issue such other injunctions or orders as may be deemed necessary to prevent any or all of the following occurrences:

(A) Interference with the commissioner or the proceeding.

(B) Waste of assets of such person.

(C) The institution or prosecution of any actions or proceedings.

(D) The obtaining of preferences, judgments, attachments, or other liens against such person or its assets.

(E) The making of any levy against any such person or its assets.

(6) The failure to comply with an order of the court is contempt and shall be punishable by imprisonment and fine.

(b) In addition to the powers conferred on a receiver or ancillary receiver by this Section, the receiver or ancillary receiver may renew existing policies and issue new policies, provided that all such policies shall expire not later than one year after the effective date of the first policy sold by the California Non-Profit Insurance Fund, as specified in subdivision (b) of Section 2 of Article 35 of the California Constitution.

(c) No legal or equitable action brought against the State of California, or any agency thereof, the commissioner, or receiver of a delinquent insurer, arising out of any claim for taking or deprivation of property relating to the exercise of powers under this section, shall be filed later than 100 days following the occurrence alleged to cause injury. The filing of such an action shall not delay or deny the exercise by the commissioner or receiver of any powers conferred under this section. The sole issue to be determined in such action shall be the amount, if any, of any monetary damages to be paid, and no other relief may be given.

#### **Section 14. Penalties for Violation of Laws**

Section 13810 of the Insurance Code is added, to read:

(a) Any person, insurer, organization, group or association who violates Chapter 9 of Part 2 of Division 1 of the Insurance Code, or Section 1064.20 or Section 1064.21 of the Insurance Code, is, after notice and hearing and upon order of the commissioner, subject to one or more of the following penalties, at the discretion of the commissioner.

(1) A monetary fine of not more than \$200,000 for each violation;

(2) A monetary fine of not more than \$1,000,000 if the commissioner finds that violations have occurred with such frequency as to constitute a general business practice;

(3) Suspension or revocation of a license held by the violator if the violator knew or reasonably should have known it was in violation of such laws.

(b) These penalties may be in addition to any other penalties provided by law.

(c) Any person whose rights under Chapter 9 of Part 2 of Division 1 of the Insurance Code may apply to an court of competent jurisdiction for equitable relief and for compensatory and exemplary damages. In such an action, the court shall award reasonable costs and attorney's fees to the prevailing party.

(d) Any officer, executive, or other employee of an insurer, organization, group or association who willfully causes a violation of Chapter 9 of Part 2 of Division 1 of the Insurance Code, or Section 1064.20 or Section 1064.21 of the Insurance Code, is guilty of a felony, punishable by a fine of not more than \$20,000 or a term of imprisonment of not more than five years, or both.

(e) The Attorney General or any District Attorney may enforce this section.

#### **Section 15. Crisis Authority**

Section 10 of Article XXXV of the California Constitution is added, to read:

SEC. 10. (a) The Commissioner shall immediately establish the Fund upon finding that a private passenger vehicle availability crisis exists. Such crisis shall be deemed to exist if the total number of voluntary market private passenger vehicle insurance policies in effect in California has declined by 15% since December 31 of the second preceding year.

(b) The Legislature may by majority vote authorize the Fund to sell other lines of insurance.

#### **Section 16. Definitions**

Section 11 of Article XXXV of the California Constitution is added, to read:

SEC 11. As used in this article:

(a) "Average premium" means the total premiums written on policies becoming effective during the specified period of time, divided by the total number of such insurance policies.

(b) "Adjusted for inflation" means increased by the percentage change in the Consumer Price Index for all urban consumers, U.S., as published by the Bureau of Labor statistics, U.S. Department of Labor, for private passenger vehicle insurance. In the event that the Index specified herein is unavailable, the commissioner shall employ an index that most closely approximates the measure of inflation for private passenger vehicle insurance nationally.

(c) "Adjusted for changes in coverage" means increased or decreased to compensate for differences in the types and amounts of coverages.

(d) "Commissioner" means the Insurance Commissioner.

(e) "Fund" means the California Non-Profit Insurance Fund.

(f) "Passenger vehicle" means either a private passenger or a non-private passenger vehicle.

(g) "Private passenger vehicle" means any vehicle, station wagon, pickup truck, panel truck, van, camper, motor home used for recreational purposes, motorcycle, or any motortruck with a load capacity of 1500 pounds or less, owned by a natural person and not used as a public or livery conveyance for passengers.

(h) "Non-private passenger vehicle" means any vehicle, station wagon, pickup truck, panel truck, van, camper, motor home, motorcycle, or any motortruck with a load capacity of 1500 pounds or less that is used as a public or livery conveyance for passengers or is not owned by a natural person.

(i) "Rollback level specified by Proposition 103" means the average premium for policies written during 1987, reduced by 20%.

(j) "Savings in uninsured motorist losses" means the amount by which annual insured losses caused by uninsured and underinsured motorists has declined, or is projected to



decline, since the year preceding adoption of this article or division 3.5 of the Insurance Code.

Section 13811 is added to the Insurance Code, to read:

13811. Unless otherwise provided by this division, the definitions in Article 35 of the California Constitution govern the construction of this division.

#### **Section 17. Applicability of Other Laws**

Section 13812 of the Insurance Code is added, to read:

13812. (a) The Fund shall be subject to: Division 3.5 (commencing with Section 13800) of the Insurance Code; Division 3.6 (commencing with Section 810) of the Government Code; the Public Records Act; and the Open Meetings Act; except where in conflict with Section 13805.

(b) Except as otherwise provided in this division and Article 35 of the California Constitution, no law of this state restricting, or prescribing a mode of procedure for the exercise of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the Fund, except as provided by this Article.

**Section 18.** Section 1859.1 of the Insurance Code is repealed.

#### **Section 19. Judicial Review**

This measure shall be liberally construed and applied in order to fully promote its underlying purposes. Any person shall have standing to seek an order compelling the enforcement of any affirmative duty created by this measure and the Supreme Court, Courts of Appeal and Superior Courts shall have jurisdiction to issue any order necessary to ensure that the provisions of this measure are fully implemented. A legal challenge to any provision of this measure shall not stay its application except to prevent extraordinary and irreparable injury, and only if the plaintiff establishes a clear probability of prevailing on the merits. Such a stay may only be granted with respect to the specific provisions for which these criteria are met. In the event of a challenge to the constitutionality of this measure, the proponents of the measure shall be named as real parties in interest and, if they participate in the action and the constitutionality of this measure is upheld, in whole or in part, the proponents shall be entitled to an award of costs, including reasonable attorney's fees.

#### **Section 20. Severability**

If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable; provided, however, that if Section 3 of Article 35 of the California Constitution, as added by this Initiative Measure, is held unconstitutional, this Initiative Measure shall not become operative. If any provision of Section 1 of Article 35 of the California Constitution, as added by this Initiative Measure,

is held unconstitutional, Subdivision (a) of Section 3 of the California Constitution, as added by this Initiative Measure, shall immediately go into effect.

#### **Section 21.                      Amendments**

The statutory provisions of this measure may be amended by the Legislature to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership in each house concurring, except as specifically provided herein.

Any person may challenge a legislative amendment of this measure before any competent court. In determining whether the amendment "furthers the purposes" of the measure, the court shall independently review the express and implied purposes of the measure; statements made by the Legislature that the amendment furthers the purposes of the measure shall have no probative force whatsoever. In the event that the court finds that the amendment is in violation of this provision, the court shall award attorneys fees to the challenger.

A bill which exercises the powers specifically granted to the Legislature by Section 5 of Article XXXV of the California Constitution shall not be deemed to be an amendment for purposes of this subdivision, and may be passed by majority vote.

The people may amend this measure by constitutional initiative.

#### **Section 22.                      Effective Date**

This measure shall take effect immediately upon passage.